67. Sudan: Islam is the de facto state religion. There are reports of forced conversion of Christians to Islam, Christians are victims of slave raids and Christian children being sent to reeducation camps. Muslims may proselytize, but non-Muslims cannot.

68. Syria: The President of Syria must be Muslim. The government discourages proselytizing. Jews are generally barred from holding government positions. Reports indicate that the government closely monitors worship services.

569. Tunisia: The government views proselytizing as an act against public order. Foreigners suspected of proselytizing are deported. The government controls mosques and pays the salaries of the prayer leader.

70. Turkey: there is compulsory religious education for Muslims. proselytizing is not illegal, but foreign missionaries are sometimes arrested for disturbing the peace.

71. Turkmenistan: Churches are required to be registered by the government. Requirements that the church have at least 500 adherents have hampered the efforts of some religions from setting up legal religious organizations. Missionaries arriving at the airport with religious material have had that material confiscated.

72. Ukraine: An amendment to a 1991 law restricts the activities of non-native churches. Local government officials have impeded the efforts of foreign missionaries.

73. United Arab Emirates: Islam is the official religion. Non-Muslims are free to worship, but may not proselytize, or distribute religious material.

74. United Kingdom: Has a state religion. Blasphemy is illegal although the law is not enforced. There is freedom of religion.

75. Uzbekistan: Although the distribution of religious material is legal, proselytizing is not. The government does not register Christian groups of which they do not approve, and has sought to control the Islamic hierarchy.

76. Vietnam: Only two Christian religions are approved by the government—The Catholics and the Christian Missionary Alliance. Police have raided house churches and harassed ethnic Hmong Protestant for proselytizing.

77. Yemen: Islam is the state religion. There are restrictions on the followers of other religions—They are not allowed to proselytize. Security officials have been known to censor the mail of Christian clergy who minister to the foreign population.

Mr. NICKLES. Mr. President, I yield the floor.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER (Mr. SESSIONS). The Senator from Delaware.

Mr. BIDEN. Mr. President, I ask unanimous consent to proceed for up to 30 minutes as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

## THE IMPEACHMENT PROCESS

Mr. BIDEN. Mr. President, during the past 26 years as a U.S. Senator, I, like all who sit here, have been confronted with some of the most significant issues that have faced our Nation in the last quarter century—issues ranging from who sits on the highest court of the land, the Supreme Court, to whether or not we should go to war. These and others are, obviously, weighty issues. But none of the decisions has been more awesome, or more daunting, or more compelling than the issue of whether to impeach a sitting President of the United States of America, a responsibility that no Senator will take lightly.

As imposing as this undertaking is, I am sad to say that I have had to contemplate this issue twice during my service as a U.S. Senator—once during the term of President Richard Milhous Nixon, and now.

While the circumstances surrounding these two events are starkly different, the consequences are starkly the same. The gravity of removing a sitting President from office is the same today as it was 26 years ago. And 26 years ago as a much younger U.S. Senator, I took to the floor on April 10, 1974, and said the following:

> In the case of an impeachment trial, the emotions of the American people would be strummed, as a guitar, with every newscast and each edition of the daily paper in communities throughout the country. The incessant demand for news or rumors of news—whatever its basis of legitimacy—would be overwhelming. The consequential impact on the Federal institutions of government would be intense—and not necessarily beneficial. This is why my plea today [that was 1974] is for restraint on the part of all parties involved in the affair.

It is somewhat presumptuous for any Senator to quote himself. But I cite it to point out that my views then with a Republican President are the same as my views today with the Democratic U.S. President. It is time for all parties involved in this affair to show restraint.

I rise today because I believe that we are not exercising the restraint as we should. Those words that I said 24 years ago have an uncanny ring to them. Furthermore, in 1974, I urged my colleagues in the U.S. Senate during the Watergate period to learn from the story of Alice in Wonderland. I cautioned then that they remember Alice's plight when the Queen declared, ''Sentence first and verdict afterwards.'' But the need for restraint then is even greater now than it was in 1974.

The impeachment question then was not as politically charged as it is today. In 1974, we were willing to hear all the evidence before we made any decision. We had men like Howard Baker and Sam Ervin. We had men like Chairman Peter Rodino. We had Democrats and Republicans. I remember a brilliant young Senator from Maine, who was then a Congressman named William Cohen, a Republican, and now our Secretary of Defense. He was a Congressman from Maine. I remember how serious they took the process, how much restraint they showed, and how bipartisan their actions were.

Today, I hope for our Nation's sake—not the President's, but for our Nation's sake—that we don't follow the Queen's directive in Alice in Wonderland to ''sentence first and verdict afterwards,'' and that we will make a wise judgment about the fate of the President after deliberate consideration.

My legal training combined with more than a quarter of century of experience in the U.S. Senate, a significant part of that as chairman of the Judiciary Committee, has taught me several important lessons. Two of these are lessons that I believe are appropriate now. First is that an orderly society must first care about justice; and, second, all that is constitutionally permissible may not be just or wise.

Let me repeat the latter. All that is constitutionally permissible to do may be not wise to do, or may not be just in the doing.

It is with these two very important lessons guiding me that I embark upon a very important decision involving our country, our Constitution and our President. The power to overturn and undo a popular election by the people for the first time in our Nation's history must be exercised with great care and with sober deliberation.

We should not forget that 47.4 million Americans voted for our President in 1996, and 8.2 million voted for the President's opponent. We should also not forget, as I tell my students in the constitutional law class I teach on separation of powers, that the entire essence of our constitutional system is built upon the notion of the consent of the governed, and when we deign to overturn a decision of the governed, we are on very thin ice.

I believe Members of Congress should begin their deliberation with a thorough understanding of the impeachment process. They should understand what the framers of the Constitution intended the standard of impeachment to be. I have heard no discussion of that issue thus far. And, further, how the framers of the Constitution intended the process to work; again, I have heard no discussion of that thus far.

Let me say at the outset that what President Clinton did and acknowledged to have done is reprehensible. It was, at a minimum, a horrible lapse in judgment, and it has brought shame upon him personally. It has brought shame upon the Office of the Presidency, and his actions have hurt his family, his friends, his supporters, the causes for which he fights, and the country as a whole. I am confident that he fully understands the gravity of what he has done now.

Let me also say that I have made no judgment. I have not made any decision on what I think should happen. I have not come to any conclusion as to consequences the President should face for his shameful behavior, because I believe the oath of office that I have taken on five solemn occasions—four which were right here in the well, and one which was in a hospital in Wilmington, DE—on those five occasions, the oath that I took I believe precludes me, and I will respectfully suggest any other Senator, from prejudging, as I and all other Senators may be required to serve as the Constitution dictates, as judge and juror in what may become the trial of this century. I can only make—and I would respectfully suggest

all of us can only make—an assessment after hearing all the evidence, evidence against the President and evidence in support of the President. No one knows, to the best of my knowledge, but the Lord Almighty, how all this will turn out. However, because this is the second time in my career I have had to face this awesome responsibility, I have given this topic a great deal of thought and consideration and would like to explore, with the indulgence of the Presiding Officer, some of the issues that I believe will surely confront responsible Members of Congress and all Americans as we enter this difficult period in our history.

Mr. President, the framers of the Constitution who met in Philadelphia in the summer of 1787 considered—and this is a fact little known, at least little spoken to—offering this country a Constitution that did not include the power to impeach the President. Let me reemphasize that. The founders considered not including in our Constitution the power to remove the President from office. After all, they reasoned, any wrongs against the public would be dealt with by turning the President out in the next election. To overturn an election, which I will speak to in a moment, would lend itself to political chicanery.

One delegate to the Constitutional Convention, Charles Pinckney of South Carolina, worried that the threat of impeachment would place the President under the thumb of a hostile Congress, thereby weakening the independence of the office and threatening the doctrine upon which our Constitution was built—the separation of powers. According to James Madison's notes, Pinckney called impeachment a ''rod'' that Congress would hold over the President.

In being reluctant to include any impeachment power, the framers were not trying to create an imperial Presidency. In fact, what they were worried about was protecting all American citizens against the tyranny of a select group. In their view, the separation of powers constituted one of the most powerful means for protecting individual liberty, because it prevented Government power from being concentrated in any single branch of Government. To make the separation of powers work properly, they reasoned, each branch must be sufficiently strong and independent from the other so that the power of one branch could not be encroached upon by the other.

The framers were concerned that any process whereby the legislative branch, the branch they deemed ''the most dangerous,'' could sit in judgment of a President who would be vulnerable to the abuse of partisan faction which, as my friend and Presiding Officer and gifted lawyer knows, was one of the overwhelming, recurring concerns of the founders—partisan politics. They feared that this most dangerous branch could sit in judgment of a President who would be vulnerable to abuse by partisan factions.

Federalist No. 65 begins its defense of the impeachment process which ultimately was included by warning of the dangers of the abuse—of the abuse—of the power. It argues, Federalist 65, that is, that impeachment:

> . . . will seldom fail to agitate the passions of the whole community, and to divide them into parties, more or less friendly or inimical, to the accused. In many cases, it will connect itself with the preexisting factions, and will enlist all their animosities, particularities, influence and interest on one side, or on the other; and in such cases there will always be the greatest danger that the decision will be regulated more by the comparative strength of the parties than by the real demonstration of guilt or innocence.

Don't you find it kind of fascinating that the Federalist Papers, which were the 1787–1788–1789 version of advertising to sell the Constitution, don't you think it fascinating, instead of them writing about, warning about the abuse of power by the President requiring impeachment, they wrote about and were concerned about and more debate was conducted about the abuse of power by political factions in the legislative branch to overturn the will of the American people?

So the framers were fully aware that the impeachment process could become partisan attacks on the President—charged with animosities generated by all manner of trials, prior struggles and disagreements over executive branch decisions, over policy disputes, over resentment at losing the prior election, and God only knows what else.

Federalist No. 65 expresses the view that the use of impeachment to vindicate any of these animosities would actually be an abuse of power. So the power that they were at least equally in part worried about being abused was the partisan power of a legislative body to overturn a decision of the American people—giving too much power to the legislative branch at the expense of the executive branch, thereby diluting the separation of powers doctrine, concentrating it too much in one place and thereby jeopardizing the liberty and freedom of individual Americans.

This sentiment that I referred to about the abuse of power by this body and the House is as true today as it was when the Constitution was being written. It was also true when Richard Nixon faced impeachment in 1974. In fact, it would have been wrong for Richard Nixon to have been removed from office based upon a purely partisan vote. No President should be removed from office merely because one party enjoys a commanding lead in either House of Congress. And I would remind my colleagues that when I arrived here in 1973, and when the Nixon hearings were going on in 1974, the Democratic Party—and he was obviously a Republican—enjoyed an overwhelming, commanding plurality of votes. My recollection is there were roughly 64 Democratic Members of the Senate at the time, and a prohibitively large plurality of Democrats in the House of Representatives. In fact, it would have been wrong then, as it would be wrong now, to have removed him based upon the power that was in the hands of one party. No President should be removed merely because one party enjoys a commanding lead in either House of Congress.

Yet, while the framers knew that the impeachment process could become partisan, they needed to deal with the strong anti-Federalist factions that jeopardized the possibility of the Constitution being ratified by the requisite number of States. The anti-Federalists strenuously argued that the Federal Government would quickly get out of step with the sentiments of the people and become vulnerable to corruption and intrigue, arrogance and tyranny. These charges proved close to fatal as the ratifying conventions in the States took up the proposed Constitution.

It was with this looming danger in mind, of losing the ratification fight, that the Federalists decided to include the impeachment provision in the Constitution. The framers of the Constitution knew that the Constitution would have been even more vulnerable to charges of establishing a government remote from the people if the President were not subject to removal except at the next election.

James Madison's notes, again, of the Philadelphia Constitutional Convention, record his observations of the debate, where he said he:

> . . . thought it indispensable that some provision should be made for defending the community against the incapacity, negligence or perfidy of the chief magistrate, [that is, the President]. The limitation of the period of his service was not a sufficient security. He might lose his capacity after his appointment. He might pervert his administration into a scheme of speculation or oppression. He might betray his trust to foreign powers.

So, those concerns, those concerns expressed by Madison about whether or not the President might lose his ability to lead, might ''pervert his administration to a scheme of speculation or oppression, might betray his trust to a foreign power''—they were thought to be sufficient reason to include the power of impeachment in the Constitution. So, in the end, the framers of the Constitution risked the abuse of power by the Congress to gain the advantages of impeachment.

Once the decision to include the power of impeachment had been made, the remainder of the debate on the impeachment clause focused on two issues. The first debate, which we do not even talk about, was whether or not to give the power to the Congress to impeach, and weighed the advantages and disadvantages. The disadvantage was, it would lead to partisan bickering and abuse of power by the Congress. But that was outweighed, ultimately, in their minds, by the process that a President could and might subvert the interests of this country to a foreign power or subvert the office to

oppress the people or to take advantage of the office in a way that was inappropriate in the minds of the American people.

Once that decision was made, though, they then focused on, OK, we are going to include it, but—but—what was supposed to constitute an impeachable offense? Put another way, what was the standard going to be that they expected the Congress to use? And then they said: After we decide that, we have to decide how is impeachment to work? How is the process to be undertaken? And what were the procedures that should be set down as to how to approach such an awesome undertaking?

As we shall see, the framers proved unable to separate these two issues entirely. Understanding how they are entwined, however—that is, the question of what constitutes an impeachable offense and how is the mechanism to work—understanding how these two issues are intertwined, I believe, will help us to understand the full implications of the power that the Constitution gives those of us who serve in the Congress. The Constitution provides that the House of Representatives shall have the power to impeach—article I, section 2, clause 5.

The framers' decision that the House of Representatives would initiate the charges of impeachment follows the pattern of the English Parliament, where the House of Lords initiates charges of impeachment. Beyond this, the choice—the choice of the House being given this power—must have seemed fairly compelled by two related considerations.

The first, already mentioned, was the need to provide the people as a whole with assurances that the Government they were being asked to create would be responsive to the interests and concerns of the people themselves. So what better place to go than the people's house, the House of Representatives?

The second reason for the House being given this power to initiate was the framers' substantive understanding of the impeachment power. It was a power to hold accountable Government officers who had, in Hamilton's terms, committed ''an abuse or violation of some public trust,'' thereby committing an injury ''done immediately to the society itself.''

Keep in mind what they are talking about here—at least what Hamilton was talking about—as to what constituted the kind of offense that was contemplated to be impeachable: Something that was an abuse or violation of the public trust and done immediately to the society itself.

If the gravamen of an impeachment is the breach of public trust, no branch of the Federal Government could have seemed more appropriate to initiate such a proceeding than the House of Representatives, which was conceived and defended as the Chamber most in tune with the people's sympathies and hence most appropriate to reflect the people's views as to whether the society itself was done immediate harm.

The Constitution further provides that the President shall be ''removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.'' Article 2, section 4 of the U.S. Constitution.

The Constitution provides that ''the House of Representatives shall . . . have the . . . Power of Impeachment.'' Article I, section 2, clause 5. And the Senate shall remove from office on ''Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.''

This language, the language about what he should be removed for, went through several changes during the summer of 1787. In the initial drafts, the grounds for impeachment—once the debate was over as to whether or not to include impeachment as a power—the initial drafts, the grounds for impeachment, were restricted to treason and bribery alone, period; nothing else—not another single thing.

I remind my friends who call themselves strict constructionists—I have run into them over my 26-year career and, as chairman of the Judiciary Committee, have had numerous debates with now Supreme Court Justices, and some who are not Supreme Court Justices, on what is the proper methodology for interpreting the Constitution. Those who view themselves as strict constructionists say the words, if their plain meaning is clear, control.

Initially this debate, once impeachment was decided upon as a power that would be granted to the Congress, included impeachable offenses for only two purposes: Treason or bribery.

When the matter was brought up on September 8, 1787, George Mason, of Virginia, inquired as to why the grounds should be restricted only to those two provisions. He reasoned that there are other ways the public trust in government can be abused, so why only these two? He argued:

> Attempts to subvert the Constitution may not be treason as above defined.

So, accordingly, he moved to add the word ''maladministration'' as a third ground for impeachment.

James Madison objected to Mason's motion, contending that to add ''so vague a term''—the term being maladministration—to add ''so vague a term will be equivalent to a tenure during the pleasure of the Senate.''

Or put another way, if you said ''maladministration,'' the majority party in the House and the Senate could at any time overturn an election by alleging maladministration. So Madison came along and said, ''I understand what you are trying to do, old George, to Mason''—my words, not theirs—''I understand what you are trying to do here; we acknowledge that you can violate the public trust and abuse the office to do injury to the American people other than by treason and bribery.'' But if you read Madison's notes, if you read the debate, as I have, I challenge you to find an interpretation other than essentially what I am giving you here, which is this: ''But, George, if you put maladministration on, it will be subject to too much—too much—abuse. And, George, I acknowledge that something beyond treason and bribery can do harm. But, George, let's be careful what we add.''

They debated it. James Madison objected to the motion, as I said, because it was vague and here, again, we see the worry that impeachment would be misused by the Congress to reduce the independence of the President, allowing partisan factions to interfere at the expense of the larger public good and overturning the election or the consent of the governed being attacked because separation of powers had been reduced.

The objection on the part of Madison proved effective, because Mason subsequently withdrew the motion and came up with another phrase, and you know what the phrase was. It said: ''. . .or other high crimes and misdemeanors.''

Obviously, the context in which ''high crimes and misdemeanors'' was entered was to be something a heck of a lot more than maladministration and less than treason or bribery, or at least equal to.

What does this phrase mean? It is clear the framers thought it to be limited in scope, but beyond this, constitutional scholars of whom I have inquired and read have been debating the meaning of this phrase from the very early days of the Republic, and there is not a clear consensus. Despite this ongoing dialog and disagreement, though, I believe there are two important points of agreement in the minds of almost all constitutional scholars as to the original understanding of the phrase.

The PRESIDING OFFICER. The Chair informs the Senator that his 30 minutes have expired.

Mr. BIDEN. I ask unanimous consent to proceed for another 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BIDEN. Mr. President, despite this dialog, as I indicated, scholars agree on two important points and a third issue where the weight of history suggests subtle practice. Let me speak to that.

As we already have seen, the framers did not intend that the President could be impeached for maladministration alone. Second, a great deal of evidence from outside the convention shows that both the framers and the ratifiers saw ''high crimes and misdemeanors'' as pointing to offenses that are serious, not petty, offenses that are public or political, not private or personal.

In 1829, William Rawle authored one of the early commentaries on the Constitution of the United States. In it, Rawle states that ''the legitimate causes of impeachment . . . can only have reference to public character and official duty.

He went on to say:

In general, those offences which may be committed equally by a private person as a public officer are not—

Emphasis, not—

the subjects of impeachment.

In addition, more than 150 years ago, Joseph Story, as my learned colleague who is presiding knows was a lawyer, Joseph Story and his influential commentaries on the Constitution stated that impeachment is ''ordinarily'' a remedy for offenses ''of a political character,'' ''growing out of personal misconduct, or gross neglect, or usurpation, or habitual disregard of the public interests, in the discharge of the duties of political office.''

The public character of the impeachment offense is further reinforced by the limited nature of the remedy for the offense. In the English tradition, which we rejected, impeachments were punishable by fines, imprisonment or even death.

In contrast, the American Constitution completely separates the issue of criminal sanctions from the issue of removal from office.

Our Constitution states that, ''Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust, or Profit under the United States. * * * '' Article I, section 3, clause 7.

The remedy for violations of the public's trust in the performance of one's official duties, in other words, is limited to removal from that office and disqualification from holding further office; remedies that, I might add, correspond nicely to the public nature of the offenses in the first instance.

Additional support comes from another commentator, James Wilson, a delegate to the Convention from Pennsylvania. In his lectures on the Constitution, Wilson wrote:

In the United States and Pennsylvania, impeachments are confined to political characters, to political crimes and misdemeanors, and to political punishments.

All in all, the evidence is quite strong that impeachment was understood as a remedy for abuse of official power, breaches of public trust, or other derelictions of the duties of office.

The third point to make about the scope of the impeachment power is this: To be impeachable, an offense does not have to be a breach of the criminal law.

The renowned constitutional scholar and personal friend and adviser, the late Phillip Kurland, the leading constitutional scholar of this century, I argue, wrote that:

At both the convention that framed the Constitution and at the conventions that ratified it, the essence of an impeachable offense was thought to be breach of trust and not violation of criminal law. And this was in keeping with the primary function of impeachment, removal from office.

If you put the notion that an impeachable offense must be a serious breach of an official trust or duty, together with the point that it does not have to be a criminal violation, you reach the conclusion that not all crimes are impeachable, and not every impeachable offense need be a crime.

These points provide important anchors for any impeachment inquiry, but they do not resolve all the questions of scope that may arise. Much remains to be worked out, and only to be worked out, in the context of particular circumstances and allegations. As Hamilton explained in Federalist 65 impeachment ''can never be tied down by * * * strict rules, either in the delineation of the offense by the prosecutors or in the construction of it by the judges. * * *''

After all the legal research, we are still left with the realization that the power to convict for impeachment constitutes an ''awful discretion.''

This brings us directly to the Senate's role. To state it bluntly, I believe the role of the U.S. Senate is to resolve all the remaining questions. Let me elaborate.

The Senate's role as final interpreter of impeachments was recognized from the beginning of the Republic. For example, to refer again to Joseph Story, after he devoted almost 50 sections of his commentaries to various disputed questions about the impeachment power, he concluded that the final decision on the unresolved issues relating to impeachment ''may be reasonably left to the high tribunal, constituting the court of impeachment.''

I.e., the U.S. Senate, the floor upon which I stand.

The court of impeachment, the Senate, similarly was viewed in the Federalist Papers and referred to Senators as the judges of impeachment. Speaking of the Senate as the jury in impeachment trials is perhaps a more common analogy these days as you turn on your television and hear many of us speak. But the judge analogy is a more accurate analogy than the juror analogy.

In impeachment trials, the Senate certainly does sit as a finder of fact, as a jury does. But it also sits as a definer of the acceptable standards upon which the President is being judged, as a judge would do. The Senate, in other words, determines not only whether the accused has performed the acts that form the basis for the House of Representatives' articles of impeachment but also whether those actions justify removal from office.

So let's lay to rest this idea that if the President—any President—is impeached by the House of Representatives, and specific articles are alleged of violations, and we find the President violated the very charge that the House has made—that does not mean we must vote for impeachment, for we can reject the grounds upon which the House impeached in the first instance as being not sufficiently sound to meet ''high crimes and misdemeanors.'' There is no question about that, and yet it seems to be a question in the minds of the press. There is no question about that.

Once again, we find support for this view from our country's history. In two of the first three impeachments brought forward from the House to the U.S. Senate, the Senate acquitted the accused. In each of the two acquittals, however, the Senate did not disagree with the House on the facts.

One case involved a Senator, William Blount, the other an Associate Justice of the Supreme Court, Samuel Chase. In neither one was there any question that the individual had done the deeds that formed the basis of the House's articles of impeachment. Yet in each case the Senate concluded that the deeds were not sufficient to constitute valid grounds for impeachment, and so they acquitted.

Eventually then, if the current impeachment proceeds, it will fall to the Senate to decide not only the facts but the law and to evaluate whether or not the specific actions of the President are sufficiently serious to warrant being thrown out of office—being convicted.

The framers intended that the Senate have as its objective doing what was best for the country, taking context and circumstances fully into account.

I should try to be as clear as I can about this point because the media discussions have come close to missing it. It seems to be widely assumed that if the President committed perjury, for example, then he must be impeached, and he must be convicted if the Senate concludes he perjured himself. Conversely, you may think that unless it can be proven that the President committed perjury, or violated some other criminal statute, that impeachment cannot occur. Both sentiments and statements are wrong.

Recall what I said earlier: Not all crimes are impeachable offenses and not every impeachable offense need be a crime to throw a President out of office.

The Senate, for example, could decline to convict, even if the President had committed perjury, if it concluded that under the circumstances this perjury did not constitute a sufficiently serious breach of duty toward removal of the President. There is no question about that either.

On the other hand, the Senate could convict a President of an impeachable offense even if it were not a violation of the criminal law. For instance, if the Senate concluded that the President had committed abuses of power sufficiently grave, it need not find any action to amount to a violation of some criminal statute.

Let me give you an example. If there was overwhelming proof that every day the President came to his office, the Oval Office, drunk, that is not a crime, but it is impeachable—it is impeachable—committing no crime, but is impeachable. Conversely, if the Senate can conclude that the President lied

about whether or not he had an affair, they could conclude that did not constitute an impeachable offense warranting expulsion. Now, again I am not prejudging what we should decide, but I think it is very important we understand what latitude and obligations we have.

Let me now stand back from the issue of substance and procedure and look at the impeachment mechanism as it has actually functioned in our country's history. The proof of the framers' design, after all, will be in how the mechanism has worked in practice.

I am almost finished, Mr. President.

As we have seen, the framers worried that impeaching a sitting President would most likely be highly charged with partisan politics and preexisting factions, enlisting, as they said, all of the ''animosities, partialities, and influence and interest'' that inevitably swirl around a sitting President. History shows, Mr. President, they had it right from the get-go. They had it right. And they were right to worry about it.

Prior to the case of President Nixon, Presidential impeachment had only been used for partisan purposes. History tells us that John Tyler was an enormously unpopular President, facing a hostile Congress dominated by his arch political enemy, Henry Clay—one of the several people younger than me when he got here. He was an amazing guy. Here he was, a leader in the House of Representatives before he was 25, and he became a U.S. Senator before he was 30.

During the impeachment effort of John Tyler, what he was facing, Tyler, was a hostile Congress dominated by the young Henry Clay. After several years of continual clashes, numerous Presidential vetoes, and divisive conflicts with the Senate over appointments, a select committee of the House issued a report recommending a formal impeachment inquiry.

President Tyler, not being as dumb as everyone thought, reached out to his political enemies. How did he do that? He signed an important bill raising tariffs, which had been one of the reasons that there was such animosity between him and Henry Clay and his friends. He raised tariffs which he had formerly opposed. And he found other means of cooperation with Congress.

In the end, even Henry Clay, speaking from the floor of the U.S. Senate, urged the slowdown on the impeachment proceedings that he had moved to initiate, suggesting instead a lesser action of a ''want of confidence.'' ''Want of confidence''—does it sound familiar? Does it sound at all like the idea of having the President sanctioned in some way other than impeachment? Does it sound like censuring the President? ''Want of confidence.''

So Clay suggested that a ''want of confidence'' vote, rather than a formal impeachment proceeding, might be better. So in early 1843, the resolution to proceed with an impeachment—whether to proceed with the impeachment inquiry, was defeated on the House floor, 127–83. They had already begun the process of inquiry, and along came Tyler, and he said, ''I'll make peace with you.''

In 1868, Andrew Johnson came much closer to conviction on charges of serious misconduct. No southerner will be unaware of—I ask unanimous consent that I be able to proceed for another 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BIDEN. As every southern Senator knows, Andrew Johnson came much closer to conviction on the charges of serious misconduct. Although Johnson's impeachment proceedings ostensibly focused on his disregarding the Tenure in Office Act, historians—and not a single southerner does not understand—but historians uniformly agree that the true sources of opposition to President Johnson were policy disagreements and personal animosity.

The conflict this time was between Johnson's moderate post-Civil War policies toward the Southern States and the overwhelming Republican majorities in both Chambers. The Republicans feared dilution of their voting strength if the southerners were seated.

Johnson's defenders in the Senate were eventually able to hold on to barely enough votes to prevent his conviction. In Professor Raoul Berger's view, ''Johnson's trial serves as a frightening reminder that in the hands of a passion-driven Congress, the process may bring down the very pillars of our constitutional system.''

Yet, if the cases of Tyler and Johnson substantiate the framers' fears, the Nixon situation vindicates the utility of the impeachment procedures. Notice how different the Nixon proceedings were from Tyler's and Johnson's. As the Nixon impeachment process unfolded, there was broad bipartisan consensus each step of the way. I was there at the time.

While it would have been foolish to believe that Members of Congress did not worry about the partisan political repercussions of their actions, such factional considerations did not dominate decision making.

Political friends and foes of the President agreed that the charges against the President were serious, that they warranted further inquiry and, once there was definitive evidence of serious complicity and wrongdoing, a consensus emerged that impeachment should be invoked. The President resigned after the House Judiciary Committee voted out articles of impeachment by a 28–10 vote.

For me, several lessons stand out from our constitutional understanding of the impeachment process and our historical experience with it. Furthermore, I believe that a consensus has developed on several important points.

While the founders included impeachment powers in the Constitution, they were concerned by the potential partisan abuse. We should be no less aware of the dangers of partisanship. As we have seen, the process functions best when there is a broad bipartisan consensus behind moving ahead. The country is never well served when either policy disagreements or personal animosities drive the process.

Many scholars who have studied the Constitution have concluded that it should be reserved for offenses that are abuses of the public trust or abuses that relate to the public nature of the President's duties. Remember, what is impeachable is not necessarily criminal and what is criminal is not necessarily impeachable.

The Senate in particular has wide latitude in determining the outcome of this constitutional process. Just because the House may initiate an impeachment process does not mean that the Senate will conclude that the process with a vote on articles of impeachment was a correct process. It is well within our constitutional responsibilities to consider alternatives to impeachment if we find that circumstances warrant these alternatives.

I don't know that they will and I don't know that we will get there, but again, the debate is being waged as to whether or not it is in our constitutional power to consider alternatives. Remember Senator Henry Clay's ''want of confidence.''

There is no one-size-fits-all definition of impeachable offenses, divorced from such practical considerations. The Senate in particular, has an obligation to consider the full range of consequences of removing the President from Office.

In recent days, some have suggested that because the Starr Report provides a prima facie case and prima facie evidence of what are arguably impeachable offenses, the House and the Senate have a constitutional responsibility to see the impeachment process through to its conclusion.

In my view, the constitutional history that I have sketched here and more shows this position is entirely mistaken. Indeed, if anything, history shows a thoroughly understandable reluctance to have the procedure invoked in the first place.

Stopping short of impeachment would not be reaching a solution ''outside the Constitution.'' It would be entirely compatible and consistent with what the Founders contemplated, if that is what we decide. Again, I am not prejudging what we should decide.

The 28th Congress hardly violated its constitutional duty when the House decided that, all things considered, terminating impeachment proceedings after cooperation between the Congress and the President improved was a better course of action than proceeding with impeachment based on his past actions, even though it apparently did so for reasons no more laudable than those that initiated the process in the first place.

Impeachment was and remains an inherently political process, with all the pitfalls and promises that are thus put into play by politics. Nothing in the document precludes the Congress from seeking means to resolve this or any other putative breach of duty short of removing him from office. In fact, the risky and potentially divisive nature of the impeachment process may counsel in favor of utilizing it only as an absolute last resort where there is no shadow of a doubt that it meets, the criteria of treason, bribery, or other high crimes and misdeameanors.

Of course, impeachment ought to be used if the breach of duty is serious enough—what the Congress was prepared to do in the case of Richard Nixon was the correct course of action. However, nothing in the constitution precludes the Congress from resolving this conflict in a manner short of impeachment.

The critical question—the question with which the country is currently struggling—is whether the President's breaches of conduct and shameful activity, which are now well known and which have been universally condemned, warrant the ultimate political sanction. Are they serious enough to warrant removal from office?

In answering that, we need to ask ourselves, What is in the best interests of the United States of America? That is something that the founders contemplated us asking ourselves if and when faced with this question.

While I have not decided ultimately what should happen, I do want to suggest that it certainly is constitutionally permissible to consider a middle ground as a resolution of this matter. Such an approach might bring together those of the President's detractors who believe there is a need for some sanction, but are willing to stop short of impeachment, as well as those of the President's supporters who reject impeachment, but are willing to consider that some sanction ought to be implemented.

As a country, Mr. President, we have not often faced decisions as stark and potentially momentous as the impeachment of a President of the United States. On the other hand, we would be wise not to overstate such claims. Surely we have faced some moments as stark and serious as this one. We have survived those moments and we will survive this one no matter how we handle it. As my dad always says, and he is going on 85 years of age, I remember over the last 26 years going home and saying, ''Dad, this is a catastrophe,'' and he would look at me and say, ''JOE, this country is so good, it is so strong, it is so solid, that it can stand 4 or 8 years of anybody or anything.'' And he is right. He is right. So I don't want to exaggerate this.

Whatever the outcome of the present situation, I'm confident that our form of government and the strength of our country present us not with a constitutional crisis but rather with a constitutional framework and flexibility to deal responsibly with the decisions we face in the coming months. My purpose in rising today is to remind all of us of what that constitutional framework and flexibility mean, what they are.

In my closing plea I begin where I started, as a young Senator in April of 1974. This is a time for us to be cautious. This is a time for Members of this body to hold our fire. This is the time to be prepared to exercise our responsibility to be judge and jury after, and only after, all of the facts are presented to us. This is not a constitutional crisis but it is a serious, serious business.

I yield the floor.

## MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

### EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

## MESSAGES FROM THE HOUSE

At 11:27 a.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, without amendment:

S. 2392. An act to encourage the disclosure and exchange of information about computer processing problems, solutions, test practices and test results, and related matters in connection with the transition to the year 2000.

The message also announced that the House insists upon its amendments to the bill (S. 2073) to authorize appropriations for the National Center for Missing and Exploited Children and asks a conference with the Senate on the disagreeing votes of the two Houses thereon; and appoints Mr. GOODLING, Mr. CASTLE, Mr. SOUDER, Mr. HYDE, Mr. MCCOLLUM, Mr. HUTCHINSON, Mr. MARTINEZ, Mr. SCOTT, Mr. CONYERS, and Ms. JACKSON-LEE of Texas as the managers of the conference on the part of the Houses.

The message further announced that the Houses disagree to the amendment of the Senate to the bill (H.R. 3874) to amend the National School Lunch Act to and the Child Nutrition Act of 1996 to provide children with increased access to food and nutrition assistance, to simplify program operations and improve program management, to extend certain authorities contained in those Acts through fiscal year 2003, and other purposes, and agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints the following Members as the managers of the conference on the part of the House:

From the Committee on Education and the Workforce, for consideration of the House bill, and the Senate amendment, and modifications committed to conference: Mr. GOODLING, Mr. RIGGS, Mr. CASTLE, Mr. CLAY, and Mr. MARTINEZ.

From the Committee on Agriculture, for consideration of section 2, 101, 104(b), 106, 202(c), and 202(o) of the House bill, and sections 101, 111, 114, 203(c), 203(r), and titles III and IV of the Senate amendment, and modifications committed to conference: Mr. SMITH of Oregon, Mr. GOODLATTE, and Mr. STENHOLM.

### ENROLLED BILL SIGNED

At 3:03 p.m., a message from the House of Representatives, delivered by Mr. Hanrahan, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 6 An act to extend the authorization of programs under the Higher Education Act of 1965, and for other purposes.

The enrolled bill was signed subsequently by the President pro tempore (Mr. THURMOND).

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At 4:23 p.m., a message from the House of Representatives, delivered by Mr. Hanrahan, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4101) making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 1999, and for other purposes.

## MEASURES REFERRED

The following bill, previously received from the House of Representatives for the concurrence of the Senate, was read the first and second times by unanimous consent and referred as indicated:

H.R. 4595. An act to redesignate the Federal building located at 201 Fourteenth Street Southwest in the District of Columbia as the ''Sidney Yates Federal Building''; to the Committee on Environment and Public Works.

## MEASURES PLACED ON THE CALENDAR

The following bill and joint resolution were read the second time and placed on the calendar:

S. 2529. A bill entitled the ''Patients' Bill of Rights Act of 1998.''

S.J. Res. 59. Joint resolution to provide for a Balanced Budget Constitutional Amendment that prohibits the use of Social Security surpluses to achieve compliance.

## REPORTS OF COMMITTEES

The following reports of committees were submitted: